IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE S. RAJESWARAN

H.C.P.NO.856 OF 2006

J.Suganthi,
W/o. S.Jaiwanth .. Petitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Public (SC) Department,
Chennai 600 009.

2. The Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
Cofeposa Unit, New Delhi.
.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to set aside the order of the detention dated 08.08.2006 passed by the first respondent and to produce him before the Hon'ble Court and set him at liberty.

For Petitioner : Mr.R.Karunagaran

For Respondent 1 : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

For Respondent-2 : Mr.P. Kumaresan, ACGSC

O R D E R

P.K. MISRA, J

The wife of the detenu has filed this petition for quashing the order of detention dated 08.08.2006 passed by the Government of Tamil Nadu. Such order has been passed under Section 3(1)(ii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), with a view to prevent the detenu from abetting the smuggling of goods in future.

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2. The basic facts as reflected in the grounds of detention are as follows:-

(i) On receiving information that redsander logs are being smuggled in the export consignments of M/s Pirya Linkers, 223, Shakurpur, Delhi 110 034 covered under Shipping Bill No.2319359 dated 15.04.2006, the container No.SCXU-899671 0 was intercepted by the Officers of the Directorate of Revenue Intelligence and the goods were detained under Mahazar dated 20.04.2006. On examination of the container on 21.04.2006, it was found that 505 Nos. of redsander logs valued at Rs.25 lakhs had stacked inside the container. But the goods have been declared as Industrial Mineral Feldspar Soda Mesh. On enquiry, it was found that the firm did not exist at the address mentioned in the export documents and such firm was dealing with handicraft items. In connection with the above, statements of several persons have been recorded, from which it is clear that the detenu was concerned with the shipping documents.

(ii) Based on specific information that redsanders were smuggled in the guise of industrial minerals by shipping bill No.2314805 dated 7.4.2006 filed in the name of M/s S.F.S.Export & Import, 67, Angappa Naicken Street, Mannady, Chennai in container No.TTNU-221462-7 through Chennai Port by Vessel m.v.Bunga Terasek Voyage YBT 033, the said container was recalled by the DRI, Chennai, which arrived at Chennai Port on 25.04.2006. On examination of the said container on 26.04.2006, the officers found 381 Nos. of redsander logs valued at Rs.25 lakhs. On verification, it was found that M/s S.F.S.Export and Import is non-existing in the address mentioned in the export documents.

(iii) According to the statement of several persons, the detenu was concerned with the shipping documents. The detenu was interrogated by officers of DRI under Section 108 of the Customs Act, 1962 and gave statements on 20.04.2006, 27.04.2006 and 28.04.2006. In the subsequent statement dated 21.07.2006, the detenu stated that he had received the shipping documents in the name of M/s Priya Linkers and M/s S.F.S. Export & Import from Thiru.Thomas and on the instructions of the said person, he had attended to the clearance work and he was present when the goods were stuffed and he knew that redsanders were smuggled in these two export consignments, which

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fact he had not disclosed in his earlier statements to escape from any legal action and he used to take special care to get such bills being processed without any hitch and to get the consignments cleared.

(iv) J.Thomas @ Sathish had given statements on 18.07.2006 and 19.07.2006 stating inter-alia that he received export documents in respect of M/s Priya Linkers and M/s S.F.S.Export & Import from one Thiru.Jebaral @ Rafique and handed over the same to the detenu for the purpose of filing with the customs.

(v) The detenu was arrested by DRI on 21.07.2006 and produced before the Magistrate and the detenu was remanded till 04.08.2006, which was later on extended till 14.08.2006. At the time of remand, the detenu had not made any complaint against the officers and had not disputed the statements. Bail application was filed on 26.07.2006 claiming that the detenu was innocent. A counter affidavit dated 31st July 2006, denying the averments and praying to dismiss the bail petition was filed by the Senior Intelligence Officer, DRI, Chennai. The Special Public Prosecutor for Customs, Central Excise & Enforcement Directorate, Chennai has informed the detaining authority by his letter dated 7.8.2006 that the bail application was adjourned to 14.08.2006.

(vi) The representation dated 29.07.2006 made by the detenu to the DRI, was also considered by the detaining officer. But the Government was satisfied that the contention raised in the bail petition and the representation were baseless.

On the basis of the aforesaid facts, the order of detention was passed as the detenu had abetted the smuggling of redsander logs. The said order of detention is in question in the present petition.

3. The learned Counsel appearing for the detenu has contended that the conclusion of the detaining authority that the detenu had abetted the smuggling of redsander logs is practically based on no evidence, as in the earlier statements made by the detenu on 20.04.2006, 27.04.2006 and 28.04.2006, the detenu had protested his innocence and had categorically stated that he was not aware of the materials contained inside the container and he was merely acting as an agent to clear the customs papers and subsequent statement dated 21.07.2006 made by the detenu had been subsequently retracted and detaining authority without considering the

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fact of such earlier statements and such subsequent retraction in proper perspective, has mechanically passed the order of detention without proper application of mind.

4. It is true that in the earlier statements recorded on 20.04.2006, 27.04.2006 28.04.2006, there was no incriminating materials against the detenu and only for the first time such a statement was made by the detenu on 21.07.2006, wherein he indicated that he was present when the redsander logs were stuffed into the container and that he was aware that he was illegally exporting redsander logs. It is the contention of the detenu in the retraction that such statement dated 21.07.2006 was obtained by force. We are afraid, it is not within our jurisdiction to consider the fact of such retraction as we cannot sit as an appellate authority over the decision of the appropriate Government, more particularly when such decision is based on the subjective satisfaction of the appropriate authority. It is of course true that subsequently the detenu had retracted. But the detaining authority was aware of such subsequent retraction and considering the materials and record, the detaining authority came to the subjective satisfaction to detain the detenu. We cannot go behind such subjective satisfaction to come to a different conclusion.

5. It was further contended that the subsequent retraction which are relevant aspect had not been placed before the Advisory Board and therefore the order of detention is vitiated.

6. In the counter affidavit filed on behalf of the respondents, it has been specifically stated that such retraction was also placed before the Board and we have no reason to discard such statement made in the counter affidavit.

7. The learned Counsel further contended that the information that redsander logs were being smuggled was available on 15.04.2006 and thereafter the container was detained on 20.04.2006 and subsequently the other container was detained on 25.04.2006 and yet the order of detention was passed only on 08.08.2006, after a gap of more than 3 ½ months. It is submitted by the learned counsel for the petitioner that this unusual delay indicates that there was no urgency or real necessity to detain the detenu. In support of such contention, the learned counsel had placed reliance upon the unreported decision of the Division Bench of this Court in H.C.P.No.612 of 2006, disposed of on 04.09.2006. In connection with the facts of the said case, the Division Bench had observed that there was no proximity between the ground occurrence and the detention order passed after a period of 38 days.

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8. Even though such a contention may appear prima-facie attractive, on a detailed scrutiny, we are unable to accept such contention. In the present case, after the seizure, the authorities were examining various persons including the detenu. The detenu in his statements dated 20.04.2006, 27.04.2006 and 28.04.2006, had protested about his innocence. For the first time, the detenu in his statement dated 21.07.2006 stated that he was aware that redsander logs had been stuffed inside the container. Thereafter, upon further verification, the order of detention has been passed on 08.08.2006. In view of the above, it cannot be said that there was no 'live-link' between the dates of commission of the offence and the date of the order of detention.

9. The learned counsel for the petitioner further submitted that the bail application had been filed, the disposal of which had been intentionally delayed by the detaining authority with a view to pass the order of detention. Of course in the grounds of detention it has been stated that counter affidavit dated 31.07.2006 denying the averments and praying to dismiss the bail petition was filed by the Senior Intelligence Officer and the Special Public Prosecutor had informed by letter dated 07.08.2006 that the bail petition was adjourned to 14.08.2006. The learned counsel for the petitioner had invited our attention to the letter of the public prosecutor, which indicates as if the matter was adjourned to 14.08.2006 for filing counter and for consideration of bail. On the basis of the above, the learned counsel for the petitioner has contended that in fact counter had not been filed and yet in the grounds of detention, it has been recited as if counter had been filed.

10. Even though there is a slight discrepancy between the actual scenario and the recital in the grounds of detention regarding the filing of the counter affidavit in the bail petition, in our considered opinion, such minor discrepancy does not have the effect of vitiating the subjective satisfaction of the detaining authority. The relevant question to be considered is relating to the subjective satisfaction of the detaining authority regarding the possibility of the detenu being released on bail. The fact remains that the bail petition was adjourned to 14.08.2006. It has been explained in the counter affidavit that as a matter of fact the counter affidavit by the concerned officer had been made ready and sworn on 31.07.2006, which had been handed over to the public prosecutor for filing. Whether such counter was actually filed or was to be filed on a subsequent date was actually an inconsequential of minor discrepancy, which had no bearing on the question as to whether the detenu was likely to be released on bail or not. Therefore, in our opinion, the above slight inaccuracy in the recital does not have effect of vitiating the subjective satisfaction of the detaining authority.

11. It was also contended that the representation dated 30.08.2006 had not been properly considered by the authorities. A

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counter affidavit has been filed by the second respondent, Secretary to the Central Government to the effect that the representation dated 05.09.2006 (not dated 30.08.2006 as mentioned in the petition) in tamil language made by the detenu had been considered, after obtaining the English translation. The materials and record indicate such representation was rejected on 12.09.2006 and subsequently communicated. Similarly in the counter filed by respondent No.1, it has been stated that there was no representation by the detenu's wife. But the representation dated 05.09.2006 made by the detenu himself had been considered and disposed of by the State Government on 13.09.2006, which was served on the detenu on 14.09.2006. We are satisfied that there was no delay in considering such representation and there is nothing on record to indicate that there has been any non-application of mind on the part of either the Central Government or the State Government while considering such representation.

12. In the course of hearing of the matter, the learned counsel for the detenu submitted that as a matter of fact, the co-detenu had been subsequently released on the basis of the opinion of the Advisory Board and the detenu who is alleged to be a mere abettor should be dealt with similarly.

13. The subsequent quashing of detention in respect of co-detenue is not a ground for the High Court to quash the detention order of another detenu. Though such aspect may be relevant consideration for the State Government, we have no doubt in our mind that if any appropriate representation would be made by the detenu highlighting such aspect, it would receive appropriate consideration by the appropriate authority.

14. In the result, the Habeas Corpus Petition is dismissed subject to the observation made above.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Government,
   Government of Tamil Nadu,
   Public (SC) Department,
   Chennai 600 009.

2. The Secretary to the Government of India,
   Ministry of Finance,
   Department of Revenue,
   Cofeposa Unit, New Delhi.

3. The Public Prosecutor, High Court, Madras.

+ 1 CC To Mr. R.Karunagaran, Advocate SR NO.5121

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